

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 168 of 2016

BETWEEN : ROSELYN LATA

PLAINTIFF

AND : BEN MATI

First Defendant

AND : RITESH CHAND

Second Defendant

AND : REGISTRAR OF TITLES

Third Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr S. Singh, Ms I. Lutu with him, for the Plaintiff
Mr Patrick Kumar for the First and Second Defendants
Ms I Pranjivan, Ms M. Singh with her, for the Third Defendant

Dates of Hearing : 3 and 4 April 2018

Date of Judgment : 3 August 2018

JUDGMENT

1. The Plaintiff in her Amended Statement of Claim says as follows:
 - (1) The First Defendant is the mother of the Plaintiff.
 - (2) The Plaintiff and the First Defendant were beneficiaries in the estate of Gyan Deo (deceased) who died on 10 December 2000 (the estate).
 - (3) On 8 August 2002 the First Defendant obtained probate of the estate and on 8 October 2002 registered herself as a trustee on the title of the property (the property).
 - (4) Circa 17 June 2015 the First Defendant renounced her life interest in the property and wrongly transferred it to herself, by a transfer by way of administration (First Transfer).
 - (5) Circa 10 September 2015, the First Defendant fraudulently transferred the property to the Second Defendant (Second Transfer), the Particulars of which include:
 - (a) The First Defendant had no legal right to be the registered proprietor of the property.
 - (b) The Second Defendant knew or ought to have known he could not obtain a transfer of the property.
 - (6) Alternatively the First Defendant colluded with the Second and Third Defendants and fraudulently transferred the property to the Second Defendant, the particulars of which include:
 - (a) The Second Defendant knew the First Defendant had no beneficial interest in the property.

- (b) The Second Defendant knew he had no beneficial interest in the property.
 - (c) The Second Defendant procured a transfer of the property in his name for \$50,000 pretending to be a bona fide purchaser for value.
- (7) The Third Defendant knew or ought to have known that a transfer in the name of the First Defendant which it registered without the Plaintiff's consent could not have been registered. Thus the transfer is void and should be set aside.
- (8) The Third Defendant knew or ought to have known that a Transfer in the name of the Second Defendant from the First Defendant which it registered could not have been registered without the Plaintiff's consent. Despite this, the Third Defendant wrongfully registered a Transfer of the property in favour of the Second Defendant.
- (9) The Plaintiff claims:
- (a) A declaration that the First Defendant has renounced and cancelled her life interest in the estate.
 - (b) An order against the Third Defendant that the First Transfer be set aside and cancelled.
 - (c) An order against the Third Defendant that the Second Transfer be set aside and cancelled.
 - (d) An order for general and exemplary damages against the Defendants.

2, The Statement of Defence of the First and Second Defendants says as follows:

- (1) The Testator appointed the First Defendant to be the sole executrix and trustee of his estate and "she holds an absolute life interest on the said property". She has the power as executrix and trustee under the Succession,

Probate and Administration Act (SPA Act) and the Trustee Act (TA) to sell the estate property to a suitable buyer.

- (2) Circa 10 September 2015, the property was sold by the First Defendant to the Second Defendant.
- (3) The First Defendant has not renounced her life interest in the property.
- (4) The First Defendant states it is compulsory for the administratrix to be registered by way of administration to administer the property.
- (5) The First Transfer gave the First Defendant the authority and powers to sell the property to a third party.
- (6) The Second Defendant states the property was acquired by him through the Second Transfer, the transfer was registered by the Third Defendant and was not by way of fraud.
- (7) The Plaintiff circa 2001 started collecting rents from tenants who were renting the property, and has received approximately \$45,000 from the tenants for her personal gain. Because of this, the First Defendant sold the property to the Second Defendant.
- (8) The First Defendant was the registered proprietor of the property who transferred it to the Second Defendant without fraud or oppression.

3. The First and Second Defendants Counter-Claim as follows:

- (1) The First Defendant claims damages for stress and emotional embarrassment suffered due to the Plaintiff's claim which discloses no reasonable cause of action against the First Defendant and is frivolous, vexatious and an abuse of court process.
- (2) The Second Defendant states he is a Third Party and a bona fide registered owner of the property.

- (3) The Plaintiff was illegally occupying one of the flats on the property and the rental income was approximately \$300 per month and the Second Defendant seeks the rental income from the date of transfer.
4. The Third Defendant in its Statement of Defence states as follows:
- (1) A transfer was registered to the First Defendant as the administratrix (sic, executrix) of the estate of the deceased.
 - (2) A transfer was registered to the 3rd Defendant (sic, Second Defendant).
 - (3) It registered a transfer as required by the lodgement of transfer documents.
5. The Plaintiff in her Reply to the Statement of Defence of the First and Second Defendants says as follows:
- (1) The First Defendant although appointed as executrix and trustee is also a beneficiary with a life interest in the property. As she is not the final beneficiary she has no legal right to sell the property in her capacity as executrix. The Plaintiff is the remainderman and the final beneficiary of the property under the will. The SPA Act and the TA does not make provision for an executor who has a life interest in an estate to sell or transfer the property to defeat the interests of the remainderman.
 - (2) Since the First Defendant has sold the property to the Second Defendant, she has renounced her life interest. Her present occupying of the premises is not synonymous to her retaining a life interest since it is purported the Second Defendant has an absolute indefeasible title to the property.
 - (3) The registration of the Second Transfer per se does not preclude the issue of fraud.
 - (4) The transfer of the property from the First Defendant for \$50,000 is a sham and no money exchanged hands.

6. The Plaintiff in her Reply to the Statement of Defence of the Third Defendant says as follows:

(1) The Plaintiff adopts the response of “no comments” as an admission by the Defendant.

7. The Pre-Trial Conference Minutes dated 24 August 2017 include the following:

Agreed Facts include:

(1) The contents of the will are undisputed viz that the First Defendant has a life interest in the property and upon her demise, the remainder of the property to the Plaintiff for her absolute use.

(2) The First Defendant obtained probate of the estate and registered herself as trustee on the title to the property.

(3) The First Defendant transferred the property to herself by the First Transfer.

(4) The First Defendant transferred the property to the Second Defendant by the Second Transfer.

Disputed Facts include:

(1) Whether the First Defendant had the legal right to transfer the property to herself in her capacity as a life interest holder.

(2) Whether the First Defendant fraudulently transferred the property to the Second Defendant.

(3) Whether the Third Defendant knew that a transfer to the First Defendant could not be registered without the consent of the Plaintiff which they did not have.

(4) Whether the Third Defendant knew that a transfer to the Second Defendant could not be registered without the consent of the Plaintiff which they not have.

8. At the commencement of the hearing, both Counsel informed the Court that the documents in the Plaintiff’s Bundle of Documents (PBD) were agreed.

9. The Plaintiff was the first witness (PW1). She said the deceased was her father. The probate was granted to her mother, the First Defendant. There was a transmission by death to the First Defendant and then a transfer to herself. The First Defendant never asked PW1 for permission to transfer and the Third Defendant (Registrar) never asked for permission. She does not agree to a transfer to the First Defendant. The First Defendant then transferred to the Second Defendant without asking for her permission and the Registrar did not either.
10. PW1 said she wants the transfers to the First Defendant and the Second Defendant respectively to be cancelled. She had been chased out of the property and wants damages against all 3 Defendants in the sum of \$30,000 to build her house.
11. Under cross-examination by Counsel for the First and Second Defendants, PW1 said the First Defendant is the sole executrix and holds a life interest and she is still alive and residing on the property.
12. When cross-examined by Counsel for the Registrar. PW1 said she never gave permission to the Registrar to transfer. She is asking for \$30,000 damages but has no documents to prove this.
13. The Plaintiff closed her case and the First and Second Defendant started their's.
14. The First Defendant (DW1) said she holds a life interest in the estate and the Second Defendant is the current owner of the property. She gave him the land on condition he would pay all her debts, provide food and look after her till she departs.
15. During cross-examination DW1 said the deceased told her the property was hers for life, She transferred it to the Second Defendant because he took care of her and will take care of her funeral. She transferred the land to her name. She had no authority to do so.

16. The next witness was the Second Defendant (DW2). He said he is the registered proprietor of the property whose previous owner was the First Defendant. He bought it for \$50,000 and is paying by installments.
17. Under cross-examination by Counsel for the Plaintiff, DW2 said the land is his because he bought it. He knew there was a will. The purchase was not to defeat the Plaintiff's interest in the land.
18. Under cross-examination by Counsel for the Registrar, DW2 said from his perspective the transfer was done properly.
19. With that the First and Second Defendants closed their case and the Third Defendant opened its.
20. The only witness was Ms Torika Solicake (DW3), the Deputy Registrar of Titles. She said the property was transferred to the First Defendant in her personal capacity.
21. Under cross-examination by Counsel for the Plaintiff, DW3 said she knew there is a will and to execute a transfer she needed to see the will. This is the will. The First Defendant only has a life interest. It is incorrect to have transferred the whole property to her. It is incorrect to have transferred to the Second Defendant. The Registrar knew it was wrong from 2016 and did not do anything to correct the matter. They have the power under s.166 of the Land Transfer Act (LTA) to rectify or cancel the transfer and they did not do anything.
22. Under cross-examination by Counsel for the First and Second Defendants she said the transmission was pursuant to the probate which includes the last will of the deceased. The Second Transfer was accepted by the Registrar.
23. In re-examination DW3 said the requirements have to be met which came from the LTA for a caveat to be registered and they assisted the Plaintiff in filing a caveat.

24. With that the Third Defendant closed its case. Counsel now began their submissions.
25. The Plaintiff's Counsel asked for the 2 transfers to be cancelled. It is admitted by the Registrar that the transfer to the First Defendant is incorrect. The transfer to the Second Defendant was for a consideration of other things and not \$50,000. The evidence of fraud is the First Defendant defeated the Plaintiff's interest. A life interest holder cannot transfer to herself nor to anyone else. The Plaintiff seeks \$30,000 as damages. The Registrar did nothing to assist the Plaintiff.
26. The Counsel for the First and Second Defendants now submitted. He referred to s.23(1) of the TA and said the transfer was by way of administration. The transfer to the Second Defendant is to a bona fide purchaser. When the First Defendant dies, the Plaintiff will benefit by whatsoever money is left behind. The Second Defendant was not aware of any will.
27. Counsel for the Registrar then submitted. She confirmed they should have known, but the transfer was registered because the documents submitted by the First Defendant complied with the requirements. The transfer to the Second Defendant was registered because the documents submitted by the First and Second Defendants were in compliance with the LTA.
28. Counsel said the Registrar's role is administrative and not investigatory. The 2 transfers were only registered because they met the requirements of the LTA. She said they should have checked the probate but they have to check 1000 documents a day. There was no evidence that the interests of the Plaintiff was brought to the attention of the Registrar. The Registrar did not check the will to ascertain there was an interest. She referred to s.140 ITA and said there was no willful omission on the part of the Registrar and therefore no party is entitled to costs nor to damages against it.

29. Counsel for the Plaintiff in his reply said stress and inconvenience are not causes of action. For the Registrar to shut its eyes will lead to more such cases. It should be blamed.
30. At the conclusion of the arguments I informed I would take time for consideration. Having done so I shall now deliver my decision. I shall use the proper names of the parties here. The pivotal issue is para 3 of the will which I paraphrase as follows: I give devise and bequeath all my real and personal property unto my wife Ben Mati for life and upon her death to my daughter Roselyn Lata for her use and benefit absolutely. The testator has left no room for doubt that his intention was clearly for Ben Mati to enjoy the property during her lifetime and upon her death for the property to pass to Roselyn Lata, absolutely.
31. Ben Mati knew she had only a life interest. Her name on the title should have remained as executrix of the estate of Gyan Deo and no more and nothing else. She could not enlarge her life interest to an absolute interest. She could not therefore have had the property transferred into her own name as beneficial owner nor could she have then transferred the property to Ritesh, who I find on the evidence before this Court, was not a bona fide purchaser for value without notice that neither Ben Mati nor himself could take the property. When she purported to do the latter she was acting as proprietor which she was not. Consequently her life interest did not come into play and was not affected. Thus no declaration can be granted that she has renounced her life interest.
32. In the event, I have no difficulty in arriving at my decision which is this. Ben Mati had no right in law nor in fact to purport to transfer the property first to herself and then to Ritesh. By the same token the Registrar was not entitled to register the First Transfer nor the Second Transfer. It was obliged however under s.166 LTA to correct the certificate of title concerned so that the entries or endorsements which have been wrongfully obtained are cancelled.

33. I find on the evidence led in Court that the provisions of s.41 LTA are applicable here and consequently the First Transfer and the Second Transfer are void as against the Plaintiff as their effect is to thereby defraud her of the property and the First and Second Defendants shall take no benefit therefrom.
34. I also find on the evidence that the Plaintiff has failed to satisfy the Court that she is entitled to any general or exemplary damages against the Defendants.
35. At the end of the day, the Plaintiff has succeeded in obtaining the orders sought and the First and Second Defendants have consequently failed in their Counter-Claim. In any event the First and Second Defendants could not have succeeded in their claims for the following reasons. No medical evidence was produced for the claims for stress and emotional embarrassment nor any documentary proof of the rental income.
36. Before I pronounce my judgment, I am constrained to say a few words about the performance of their bounden duty by the staff of the Registrar. I am unable to accept as an exculpatory excuse the assertion they have to deal with numerous documents every day. If I were to do that then for example a doctor charged with medical negligence which resulted in the death of one of his patients, would exculpate himself by saying he had to attend to a hundred patients that day.
37. If the transfer to Ben Mati as owner had not been registered there could not have been thereafter any registration of the transfer to Ritesh and then no action would have had to be filed. Now, however the Court has to act under the provisions of s.168 LTA.
38. In the result I make the following orders:
- (1) The Plaintiff's claims for orders that the Transfers be cancelled are granted.
 - (2) The First and Second Defendants' Counter-Claim is hereby dismissed.
 - (3) The First and Second Defendants are to pay the Plaintiff costs summarily assessed on the claim and their Counter-Claim in the sum of \$3,000.

- (4) The Third Defendant is to pay the Plaintiff costs summarily assessed at \$500.
- (5) The Registrar of Titles is to forthwith cancel the Transfer No 815184 and the Transfer No 818787 and to correct the instrument of title, Certificate of Title No 27960 and to make a memorial or entry in the register to give effect to this Order of Court.

Delivered at Suva this 23rd day of August 2018.



David Alfred

JUDGE

High Court of Fiji